

ESTTA Tracking number: **ESTTA234237**

Filing date: **09/03/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	TOP GUN INTELLECTUAL PROPERTIES, LLC
Granted to Date of previous extension	09/03/2008
Address	31-65 Steinway St. Astoria, NY 11103 UNITED STATES
Correspondence information	Michael F Sarney Attorney for Opposer KATTEN MUCHIN ROSENMAN LLP 575 Madison Avenue New York, NY 10022 UNITED STATES michael.sarney@kattenlaw.com Phone:(212) 940-8698

Applicant Information

Application No	77219055	Publication date	05/06/2008
Opposition Filing Date	09/03/2008	Opposition Period Ends	09/03/2008
Applicant	United IP, LLC 3403 E John W Carpenter Freeway Irving, TX 75062 UNITED STATES		

Goods/Services Affected by Opposition

Class 028.

All goods and services in the class are opposed, namely: Toy vehicles and accessories therefor; Toy action figures and accessories therefor

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	77229573	Application Date	07/13/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TOP GUN		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 2005/01/15 First Use In Commerce: 2005/01/15 Teddy bears; Toy airplanes; Scale model airplanes

U.S. Registration No.	3297277	Application Date	08/01/2005
Registration Date	09/25/2007	Foreign Priority Date	NONE
Word Mark	TOP GUN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1996/07/06 First Use In Commerce: 1996/07/06 Retail and wholesale store services and online retail store services in the fields of clothing, including but not limited to leather jackets, sport coats, jeans, sweatshirts, sweaters, t-shirts; accessories, namely belts, hats, caps, backpacks, rucksacks, satchels, schoolbags, handbags, wallets, tote bags, briefcases, all purpose sport bags, belt bags, shoulder bags, garment bags for traveling, key cases, personal care products, shoes and slippers, home products, leather goods, souvenir items, including watches and gift sets, and excluding protective clothing and working gloves		

Attachments	77229573#TMSN.jpeg (1 page)(bytes) 78683067#TMSN.jpeg (1 page)(bytes) Top Gun Notice of Opp.pdf (5 pages)(157436 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/michael sarney/
Name	Michael F Sarney
Date	09/03/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Application of
United IP, LLC
Serial No.: 77/219055
Filed: June 29, 2007
Mark: **TOP GUN**

Published: May 6, 2008

Top Gun Intellectual Properties, LLC,

v.

United IP, LLC

Opposition No. _____

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

NOTICE OF OPPOSITION

Top Gun Intellectual Properties, LLC, a New York limited liability company, having a place of business located at 3165 Steinway Street, Astoria, New York 11103 (“Opposer”), believes that it will be damaged by registration of the trademark which is the subject of Application Serial No. 77/219,055, filed on June 29, 2007, by United IP, LLC (“Applicant”), and hereby opposes the same.

In support of its opposition to the registration of the subject mark, Opposer alleges that:

1. Opposer is the applicant of Application Serial No. 77/229,573, filed July 13, 2007, for the mark TOP GUN, for use in connection with teddy bears, toy airplanes, and scale model airplanes, claiming a date of first use in commerce of January 15, 2005.

2. Opposer and/or its predecessor in interest has used the TOP GUN trademark in commerce since at least as early as January 15, 2005.
3. The subject application, for the identical mark, was cited against Opposer's aforesaid application as constituting a potential bar to registration of Opposer's mark based upon a likelihood of confusion. Opposer would therefore be damaged by the denial of its own application, based upon registration of the subject mark, if such registration of the subject mark is granted. Opposer will be further damaged by registration of the subject mark because Opposer has prior use of the mark TOP GUN on goods which are the same as and/or which are closely related to those recited in the subject application, and issuance of a registration for the TOP GUN to the Applicant would therefore improperly grant the Applicant the prima facie right to exclusive use of the mark TOP GUN, in connection with the subject goods, despite Opposer's prior use of and prior rights in the TOP GUN mark for such goods and/or for goods which are closely related thereto.
4. Further, Opposer is the exclusive licensee of U.S. Registration No. 3,297,277 ("the '277 Registration"), registered September 25, 2007, for the mark TOP GUN, for use in connection with retail and wholesale store services and online retail store services, for a variety of goods, including, without limitation, souvenir items, including watches and gift sets, and having a date of first use in commerce of July 6, 1996. The application from which such the '277 Registration issued was filed on August 1, 2005. The owner of the '277 Registration therefore has priority over Applicant with respect to the use of the TOP GUN mark in connection with, at least, retail and wholesale store services and online

retail services in connection with goods which are the same as and/or are closely related to the goods identified in the subject application.

5. Opposer will therefore be damaged by allowance of the subject application for the TOP GUN mark, and the issuance of a registration therefor, for the further reason that the goods covered by the '277 Registration, to the extent sold in retail and wholesale stores and online, are the same as and/or are closely related to the goods of the subject application. The owner of the '277 Registration has prior rights in and to the mark TOP GUN for use in connection with goods the same as and/or closely related to those identified in the subject application, and the issuance of a registration to Applicant for the mark TOP GUN will improperly give Applicant the prima facie right of ownership of and the right to use the TOP GUN mark for such goods, thereby causing damage to Opposer, as the exclusive licensee of the mark covered by the '277 Registration.
6. Further, registration of the TOP GUN mark by Applicant will likely cause confusion on the part of consumers as to the source of the Applicant's goods and Opposer will therefore be damaged by the confusion to consumers which will likely result, if the Applicant is permitted to register the TOP GUN mark for the specified goods. Registration of the TOP GUN mark by Applicant for such goods will also be likely to reflect adversely upon and injure the valuable reputation and goodwill of Opposer in connection with its distribution and sale of goods under the TOP GUN mark. Accordingly, Opposer is likely to suffer damage and injury to its reputation and goodwill by registration of the subject mark by Applicant.

WHEREFORE, Opposer, respectfully prays that said application Serial No. 77/219,055 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

Katten Muchin Rosenman, LLP
Attorneys for Opposer

By: 
Michael F. Sarney, Esq.

Dated: September 3, 2008

Attorney Docket No.: 340217-00001

Katten Muchin Rosenman, LLP
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New York, NY 10022-2585
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CERTIFICATE OF SERVICE

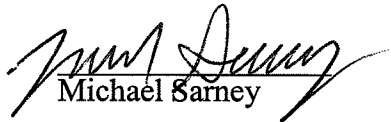
I, the undersigned, Michael Sarney, hereby certify that, on the 3rd day of September, 2008, I caused to be served a true and correct copy of

NOTICE OF OPPOSITION

with respect to Application Serial No. 77/219,055,

by U.S. Mail, first class, by depositing the same in a depository of the United States Postal Service, on the Applicant, as follows:

United IP, LLC
3403 E John Carpenter Freeway
Irving, Texas 75062


Michael Sarney